

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

MARTREK D. WINGO,)	
)	
Plaintiff,)	Case No. 2:14-cv-02643-SHM-dkv
)	
v.)	
)	
TWITTER, INC.,)	
)	
Defendant.)	
)	

**TWITTER, INC.’S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TRANSFER VENUE**

Twitter, Inc. hereby moves to dismiss plaintiff Martrek D. Wingo’s complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, to transfer this case to the proper court under 28 U.S.C. § 1404(a). As set forth in the accompanying memorandum of law in support of this motion, the grounds for this motion are as follows:

1. Mr. Wingo’s complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) because it does not allege any specific cause of action against Twitter. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (complaint must provide the defendant with “fair notice of what the . . . claim is and the grounds upon which it rests”) (internal quotation marks and citation omitted).
2. Even if Mr. Wingo’s complaint could be construed as identifying a cause of action, it should still be dismissed under Rule 12(b)(6). As the Sixth Circuit Court of Appeals recently made clear, the federal Communications Decency Act bars all “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding

whether to publish, withdraw, postpone or alter content.” *Jones v. Dirty World Entm’t Recordings LLC*, 755 F.3d 398, 407 (6th Cir. 2014) (internal quotation marks and citation omitted). That is exactly what Mr. Wingo seeks to do here.

3. Alternatively, if the complaint is not dismissed, this case should be transferred to the U.S. District Court for the Northern District of California under 28 U.S.C. § 1404(a) because Mr. Wingo agreed to a forum-selection clause that requires him to litigate any valid claims he may have against Twitter in California, not Tennessee.

Respectfully submitted,

By: /s/ J. Bennett Fox, Jr.
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CERTIFICATE OF SERVICE

The undersigned certifies that on September 26, 2014, a copy of the foregoing **Motion to Dismiss or, in the Alternative, Transfer Venue** was filed electronically using the CM/ECF system. Notice of this filing will be sent by operation of the Court’s electronic filing system to all parties indicated on the electronic filing receipt. The undersigned has also caused to be delivered via U.S. Mail and e-mail, a true and correct copy of the foregoing document to:

Martrek D. Wingo
4194 Evening Star Cove
Memphis, TN 38125
martrekwingo@yahoo.com
Plaintiff

/s/ J. Bennett Fox, Jr.